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INDIGENOUS SELF-DETERMINATION IN LATIN AMERICA

*Ángel R. Oquendo**

The indigenous people of the Americas (or what is traditionally known as Latin America) have been fighting for their rights for centuries. They have struggled not only to secure, but also to define what they are entitled to. In this effort, they have faced a society that has consistently violated, but ambivalently conceived of their prerogatives. Throughout Iberian American history, governments have radically changed their understanding of the rights that they have encroached.

During the colonial period, *Indiano* law often strove to protect autochthonous communities and to defend them from exploitation. It took pains to preserve their customs, traditions, and social structures, provided they accepted the empire's sovereignty claim and embraced its religion. Obviously, this well-intentioned effort was unsuccessful. The imperial emissaries inexorably devastated tribes, as well as entire civilizations. With this experience, the Latin American gap between legal norm and reality was born.

Without a doubt, the lack of enforcement was not accidental. The colonization project was an enterprise of domination and annihilation. The *Indiano* legislative superstructure could not alter this fact. Bans and proclamations could hardly transform avid conquerors into apostles of racial tolerance.

Independence brought a new rhetoric to indigenous affairs. The constitutions and the codes of this period celebrated the liberal spirit that had inspired the secessionist insurrection. They granted constituents from primordial communities political and civil rights equivalent to those of other citizens. Evoking French revolutionary ideology, the constitutions informed these people that the republican family would welcome them as individuals, but not as members of their respective groups.

Once again, deeds lagged far behind words. Indigenous citizens never fully enjoyed the freedoms they were promised. The authorities invariably disregarded both the letter and the spirit of the law. They ignored outright the legal demands or imposed innumerable prerequisites on the acquisition of the new civic entitlements, such as the attainment of a certain level of education or wealth. The state thus ended up excluding many members of the native communities. The situation remained basically unchanged upon

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the incorporation of social and economic rights throughout the twentieth century.

Moreover, the specific pattern of objective reality tearing asunder the legal Procrustean bed repeated itself. To a certain extent, the process of forced assimilation under the guise of nineteenth century egalitarianism operated as a second conquest. The consolidation and expansion of Iberian American nations entailed a logic of its own that defied the legally established ideological parameters.

Recently, there has been a clamor in Latin America to end this formalistic approach to indigenous rights. In part, this demand has emerged internally, as a result of the intense political and military mobilization of the native peoples in countries such as Mexico, Ecuador, and Bolivia. International forces, such as the emergence of a third generation of collective rights for minorities and aboriginal groups in the context of the human rights revolution, have also played a role in this development.

This historical juncture presents two fundamental challenges. First, Latin America must avoid regressing to the colonial model under which the autochthonous communities theoretically preserved their way of life, but were deprived of the benefits enjoyed by the rest of society. Latin America must instead find formulas that respect these communities' rights to both equality and difference. Second, the disparity between written law and legal practice has to end, or at least diminish substantially. The ordinances, regulations, statutes, constitutions, and conventions that call for reform should not rest at idle posturing.

The essays "Ethnicity and Nationhood in the Struggle for Recognition: The *Mapuches* in Chilean Society," by Jorge Iván Vergara and Rolf Foerster, and "Ethnicity and Citizenship in Recent Andean History (1930 - 1990)," by Hans Gundermann, contribute fundamentally to this debate.¹ The authors have been dialoguing about these issues for many years. Despite their divergent specialties, they share a passion for indigenous affairs and the persuasion that theory can contribute to understanding, and perhaps improve the fate of the autochthonous people of the Americas.

Gundermann's reflections begin with the *Aymara* and *Tacameña* population of the Chilean Andean North, travel through the "highlands of

1. Rolf Foerster & Jorge Ivan Vergara *Etnia y Nación en la Lucha por el Reconocimiento: Los Mapuches en la Sociedad Chilena*, MAPUCHES Y AYMARÁS: EL DEBATE EN TORNO AL RECONOCIMIENTO Y LOS DERECHOS CIUDADANOS (Rolf Foerster et al. eds. 2003) [hereinafter MAPUCHES Y AYMARÁS]; Hans Gundermann, *Ethnicidad y Ciudadanía en la Historia Andina Reciente (1930-1990)*, in MAPUCHES Y AYMARÁ, *supra*.

Peru, Ecuador, Bolivia, and the Northwest of Argentina and Chile,”² and ultimately touch upon the entire Latin American continent. Gundermann explains how the notion of citizenship initially penetrated into these territories by seeking to suppress difference. The state accordingly overlaid formal equality upon colonial stratification. Consequently, it sought not to subjugate, but rather to assimilate these communities. It exterminated cultures, perpetuated substantive inequality, and maintained the socioeconomic imbalance of colonial times.

Coincidentally, the original commitment to equality proved to be incomplete and hypocritical. The indigenous people received fewer state benefits than other social sectors and did not fully enjoy their political rights. The electoral system excluded the illiterate and the dispossessed. As the twentieth century unfolded, particularly the last three decades, these deficiencies abated considerably, and the economic and political situation of these groups improved significantly.

Gundermann calls for a fundamental change in the conception of citizenship in order to incorporate the right to difference. Citizens should be entitled not only to complete and equal inclusion in the system of legal freedoms and guarantees, but also to special prerogatives to maintain their idiosyncrasies and particularities. Specifically, Gundermann postulates a dynamic and procedural notion of citizenship.

Citizenship cannot be defined ahistorically or independently of the social and political contingencies of the nation and its social groups. Citizenship must be understood as a process. It is not a goal, or merely realized citizenship. In the historical circumstances of the referenced Andean populations, citizenship remains something essentially unfinished.³

Consequently, the postulated transformation must take place not through a “leap of faith,” but rather through protracted political engagement, and should assume different forms in various contexts.

This civic notion has run into “enormous difficulties,”⁴ in Chile, as well as in the rest of the Iberian America, due to the entrenchment of the formalistic model. Nonetheless, indigenous people have passively and actively insisted on full recognition, sometimes as separate national communities, sometimes as ethnic minorities. Education and political organization have contributed to the development of an intelligentsia and

2. Foerster & Vergara, *Etnia y Nación en la Lucha por el Reconocimiento: Los Mapuches en la Sociedad Chilena*, in MAPUCHES Y AYMARÁS, *supra* note 1, at 2.

3. *Id.* at 45.

4. *Id.* at 48.

a leadership class capable of marshaling this campaign. Even though parts of the primordial culture have disappeared forever, the new cultural outlook that has emerged feeds off the legacy that still remains and the current experience of these groups.

Foerster and Vergara, in turn, examine the situation of the *Mapuches* in Chile. They set out to solve a paradox. "Notwithstanding the achievements attained upon the enactment of the law on indigenous affairs and the increased sensitivity to the *Mapuche* community and its demands, there has not been a substantive transformation in the manner in which the state, corporations, and the influential dominant elite, along with its mouthpiece, the newspaper *El Mercurio*, relate to that group."⁵ This piece underscores two facts, which partially explain the apparent contradiction. First, governmental institutions that deal with indigenous matters have become bureaucratized and have started acting as agents of the state instead of as genuine representatives of their constituency. Second, the Chilean establishment has pressured the state to embrace the notion of a primitive and homogenous ethnic nation and to abandon the ideal of a republican and plural community of citizens.

In order to understand the problem in depth, Foerster and Vergara painstakingly define the appropriate theoretical framework. They specifically develop the concept of recognition on the basis of the abundant debate underway in Europe and the United States, as well as in Latin America. From this perspective, they tease three different demands out of the *Mapuche* cause: the agrarian, the ethnic, and the ethno-national. The first, refers to the means of agrarian production, such as credits and improvements in infrastructure. The second, encompasses issues such as "respect for the *Mapuche* identity, bilingual and intercultural education, and affirmative action, *etc.*"⁶ The last demand, includes the "struggle for a political and territorial autonomy," as well as the installment of a "people's nation."⁷

Foerster and Vergara argue that the state has recently dealt with the first two claims, albeit with fallbacks and timidity in the face of the oligarchy's opposition to any concessions, and ignored the third, which has now intensified. This neglect explains the seemingly puzzling increase in ethnic conflict despite the state's efforts on behalf of the *Mapuches*. The authors try to withhold judgment as to the legitimacy of this demand with the declaration: "as analysts of the problem, we do not want, in any way, to set the goals of the *Mapuche* movement. This collectivity has defined

5. *Id.* at 2.

6. *Id.* at 3.

7. Foerster & Vergara, *supra* note 1, at 3.

its own objectives and will continue to do so, as it sees fit.”⁸ Foerster and Vergara insinuate, however, that this claim makes them uneasy when they point out its symmetry with the ethno-nationalism of the dominant class,⁹ when they refuse to defend its national or international legitimacy,¹⁰ and when they ponder a “different possibility, *i.e.*, rethinking the idea of national membership without neglecting the legitimate demand that diversity be respected.”¹¹

Both essays coincide in recognizing recent progress in indigenous policy, in pointing out that fundamental deficiencies still exist, and in emphasizing that first people should participate autonomously in the solution of the problem. Gundermann further underscores the need to transcend formal citizenship and recognition. Foerster and Vergara insist that a substantive notion of citizenship could satisfy rural and ethnic claims, but not the ethno-national demand.

An autonomist or separatist movement of an ethno-nationalist nature would give rise to serious legitimacy problems. As Jürgen Habermas relentlessly points out, nationalism hinders reconciliation and coexistence in multicultural societies, oppresses ethnic minorities and dissidents, and therefore could not be justified discursively.¹² John Rawls would assert that a nationalist regime saddles a thick conception of the good and a comprehensive doctrine that are alien to certain individuals and groups and, consequently, violates the principle of the fairness and precludes an overlapping consensus.¹³ Both theories echo the Kantian notion of respect for human dignity, as well as the corresponding imperative to treat people like an end in themselves and never exclusively as a means.

Nonetheless, the battle for political autonomy or secession could take a radically different form. It could seek not to advance a totalitarian and exclusive ethos, but rather to protect, collectively, a threatened national culture. The premise would then be that individuals, even in a liberal or pluralistic society, might be unable to carry out the protection work on their own. They might face collective action problems, like a prisoners’ dilemma, or weakness of will.

8. *Id.* at 45.

9. *Id.* at 19.

10. *Id.* at 3.

11. *Id.* at 44.

12. See generally JÜRGEN HABERMAS, *DIE EINBEZIEHUNG DES ANDEREN: STUDIEN ZUR POLITISCHEN THEORIE* (1996).

13. See generally JOHN RAWLS, *POLITICAL LIBERALISM* (1993).

Of course, a project of this nature runs the risk of degenerating into nationalistic oppression. It is therefore indispensable to impose severe restrictions. The community would have to demonstrate not only that the culture faces a threat requiring a collective defense, but also that the deployed measures are narrowly tailored to the existing danger and reasonably preserve the autonomous cultural space of divergent and dissident subgroups. Ideally, impartial institutions would be in place to scrutinize objectively whether these conditions have been satisfied.

What I am describing is a progressive nationalism of sorts. In other words, the ultimate aim would be to place the national culture in a position of equality and not of hegemony *vis-à-vis* other cultures. Moreover, the interpretation of the national culture would be inclusive, rather than exclusionary. Finally, the cultural autonomy of individuals would carry considerable weight. The elitist and reactionary nationalism that Foerster and Vergara describe would be discarded absolutely, not only for not sharing these features, but also for not being able to show that the Chilean culture faces any kind of peril inside Chile.

The proposal at stake embraces the Hegelian conviction that it is possible to organize a political community around an integral ethical life and respect individual rights. Thus conceived, society maintains the unity and harmony of the Greek *polis*, as well as the individualism and the subjectivity that characterize modernity. Social integration ceases to be intuitive in order to become reflexive.

The projection of this or any other model onto indigenous reality requires extreme caution since there are numerous nuances, differences, and variations. Each community must accordingly build its paradigm on the basis of its own experience. Similarly, each should be ready to make revisions as underlying circumstances evolve.

In particular, the autonomy or independence at issue presupposes a certain degree of territorial and cultural cohesion. In the case of the *Mapuches*, the postulated arrangement may be appropriate for a community that lives relatively separate and on its own, but not for a subgroup that exists inside, or on the periphery of, Chilean urban centers. Consequently, the first case may call for a progressive nationalist outcome that allows the creation of an independent political structure, while the second may require an ethnic solution that facilitates full recognition as a minority. At any rate, it is fundamental not to isolate the two groups from each other. On the contrary, free movement between them should be allowed in order to avoid dividing families, so that the common culture can be enriched from both sides. The expatriated members should have a right to return to their community of origin.

The complexity of the *Mapuche* example, resembles that of other communities that are torn between homeland and Diaspora. Puerto Ricans, Québécois, and Corsicans face similar dialectics. It is useful to compare and to contrast these realities in the search of an individual solution for each case.

Thus far, I have ambiguously and indistinctly referred to autonomy and secession. Of course, the two alternatives diverge, nationally and internationally, in their possibilities and consequences. The difference, however, pertains more to form than content. What is finally at stake in both situations is the creation of a separate community structured around a different political culture, which rejects neutrality and authorizes the state to identify with a particular national perspective. Once the enormous controversy that ineluctably precedes the decision to take this path is overcome, determining whether the entity that emerges from this process should be a sovereign country or an autonomous region becomes less problematic.

If the first peoples instead opt to stay fully inside the national territory, one could try to reach the previously mentioned synthesis between equality and difference. These communities would enjoy basic civic freedoms, as well as the right to self-determination. Moreover, these communities could be integrated in the society that they inhabit without having to sacrifice their identity. They would be under ideal conditions to contribute splendidly to the pluralistic republic.

